



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0270; FRL-9924-99-Region 4]

Approval and Promulgation of Implementation Plans; Mississippi Infrastructure Requirements
for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve in part and disapprove in part the November 17, 2011, State Implementation Plan (SIP) submission, provided by the Mississippi Department of Environmental Quality (MDEQ) for inclusion into the Mississippi SIP. This final action pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 Lead national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. MDEQ certified that the Mississippi SIP contains provisions that ensure the 2008 Lead NAAQS is implemented, enforced, and maintained in Mississippi. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, for which EPA is not acting upon, and disapproving certain state boards requirements, EPA is taking final action to approve Mississippi’s infrastructure SIP submission, provided to EPA on

November 17, 2011, because it addresses the required infrastructure elements for the 2008 Lead NAAQS.

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DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0270. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9152. Mr. Farngalo can be reached via electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. Section 110(a) of the CAA generally requires states to make a SIP submission to meet applicable requirements in order to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. These SIP submissions are commonly referred to as “infrastructure” SIP submissions. Section 110(a) imposes the obligation upon states to make an infrastructure SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the infrastructure SIP for a new or revised NAAQS affect the content of the submission. The contents of such infrastructure SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 2008 Lead NAAQS, states typically have met the basic program

elements required in section 110(a)(2) through earlier SIP submissions in connection with previous lead NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic structural SIP elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The applicable infrastructure SIP requirements that are the subject of this rulemaking are listed below.¹

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement, prevention of significant deterioration (PSD) and new source review (NSR).²
- 110(a)(2)(D): Interstate and international transport provisions.
- 110(a)(2)(E): Adequate personnel, funding, and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.

¹Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to other provisions of the CAA for submission of SIP revisions specifically applicable for attainment planning purposes. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

²This rulemaking only addresses requirements for this element as they relate to attainment areas.

- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

On November 18, 2014, EPA proposed to approve Mississippi's November 17, 2011, 2008 Lead NAAQS infrastructure SIP submission with the exception of provisions pertaining to PSD permitting in sections 110(a)(2)(C), prong 3 of D(i) and (J) and the majority requirements respecting significant portion of income for state boards of section 110(a)(2)(E)(ii). EPA proposed disapproval of the majority requirements respecting significant portion of income for state boards of section 110(a)(2)(E)(ii). EPA will address the PSD permitting requirements in sections 110(a)(2)(C), prong 3 of D(i) and (J) in a separate action. *See* 79 FR 68648.

II. Today's Action

In this rulemaking, EPA is taking final action to approve Mississippi's infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 2008 Lead NAAQS, with the exception of PSD permitting provisions in sections 110(a)(2)(C), prong 3 of D(i) and (J). EPA will be taking action on these elements in a separate action. Additionally, EPA is disapproving Mississippi's infrastructure submission with regard to the majority requirements respecting significant portion of income for state boards in section 110(a)(2)(E)(ii) .

III. Final Action

With the exception of provisions pertaining to PSD permitting requirements in sections 110(a)(2)(C), prong 3 of D(i) and (J) and the majority requirements respecting significant portion of income for state boards of section 110(a)(2)(E)(ii), EPA is taking final action to approve Mississippi's November 17, 2011, infrastructure submission because it addresses the required infrastructure elements for the 2008 Lead NAAQS. EPA is disapproving in part section 110(a)(2)(E)(ii) because a majority of board members that approve permits or enforcement orders in Mississippi may still derive a significant portion of income from persons subject to permits or enforcement orders issued by such Mississippi Boards, therefore, its current SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income. With the exceptions noted above MDEQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 Lead NAAQS is implemented, enforced, and maintained in Mississippi.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations Lead, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 11, 2015.

Heather McTeer Toney,

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

2. Section 52.1270(e) is amended by adding a new entry “110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards” at the end of the table to read as follows:

§ 52.1270 Identification of plan.

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(e) * * *

EPA-Approved Mississippi Non-regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
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110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards 110(a)(2)(E)(ii) Infrastructure Requirement for 2008 Lead National Ambient Air Quality Standards	11/4/2011	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	With the exception of provisions pertaining to PSD permitting requirements in sections 110(a)(2)(C), prong 3 of D(i) and (J) and the majority of requirements respecting significant portion of income of section 110(a)(2)(E)(ii) (related to section 128(a)(2))
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3. Section 52.1272 is amended by adding paragraph (c) to read as follows:

§ 52.1272 Approval status.

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(c) Disapproval. With respect to the significant portion of income requirement of section 128(a)(1), the provisions included in the October 11, 2012, infrastructure SIP submission did not preclude at least a majority of the members of the Mississippi Board from receiving a significant portion of their income from persons subject to permits or enforcement orders issued by the Mississippi Boards. Because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards, the Mississippi SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income, and as such, EPA is today proposing to disapprove the State's 110(a)(2)(E)(ii) submission as it relates only to this portion of section 128(a)(1).

[FR Doc. 2015-06765 Filed: 3/27/2015 08:45 am; Publication Date: 3/30/2015]